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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Paper No. 9

Application Number: 09/874,031  
Filing Date: June 06, 2001  
Appellant(s): ROSKIN, LINDA

**MAILED**

MAY 09 2003

**GROUP 3600**

Eric A. LaMorte  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 25 February 2003.

**(1) *Real Party in Interest***

A statement identifying the real party in interest is contained in the brief, Linda Roskin.

**(2) *Related Appeals and Interferences***

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief. Applicant had identified there are no known appeals or interferences that would directly affect or have a bearing on the pending appeal.

**(3) *Status of Claims***

The statement of the status of the claims contained in the brief is correct.

**(4) *Status of Amendments After Final***

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) *Summary of Invention***

The summary of invention contained in the brief is correct.

**(6) *Issues***

The appellant's statement of the issues in the brief is substantially correct. The changes are as follows: page 9 line 1 'Issue 7' should be --Issue 3--.

**(7) *Grouping of Claims***

Appellant's brief includes a statement that claims three independent claims 11, 19, and 22 along with their respective dependent claims (11-18, 19-21, and 22, 5, 6, 7,

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8, 9, 10) do not stand or fall together and provides reasons as set forth in 37 CFR

1.192(c)(7) and (c)(8).

**(8) Claims Appealed**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(9) Prior Art of Record**

3,768,685	Eckman	10-1973
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EPO 0182453	Turner	05-1986
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**(10) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

Claims 5-22 are rejected under 35 U.S.C. 103(a). This rejection is set forth in prior Office Action, Paper No. 5.

**(11) Response to Argument**

Examiner maintains that Turner as modified by Eckman is in fact a valid and obvious modification to one of ordinary skill in the art, thus applicant's device has not been patentably distinguished over the teachings of the prior art. Turner teaches a container having an open top end with a predetermined maximum width (Turner Fig. 3 #14); a cover element for covering the open top end (Turner Fig. 1 #10); and a plurality of openings defined in the cover element for plant stems.

Turner teaches that the cover element is secured to the open top container by a snap-lock means (Turner page 4 line 20). However, Turner also teaches that additional means that are obvious, well-known, or conventional to one of ordinary skill in the art can modify the taught snap-lock means (page 4 line 28). Turner teaches a grid element

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(Turner page 4 line 35-36 and claim 2). The grid element of Turner does not have to be constructed only out of plastic. Turner teaches other materials for the grid construction such as ribbon (Turner page 4 line 35-36). Turner teaches flexible members, but does not teach the elastomeric concept.

However, Eckman teaches an elastomeric cover element for an open top body. The elastomeric cover has an opening to accommodate a flower. The cover of Eckman is made of rubber (Eckman Col. 1 line 20-22) and therefore it inherently has elastomeric properties. The cover element is held in place because of the elastic expansion of the rubber cover to form a friction fit around the container. It elastically stretches around the container for use in a floral arrangement stretching from an unstretched width that is inherently smaller than the stretched width. Furthermore, Eckman teaches a peripheral wall portion of the cover element (Eckman Fig. <sup>2</sup> 8 #18 is the planar surface and the curved portion is the peripheral wall). One of ordinary skill in the art would have the obvious motivation to modify the teachings of Turner with the teachings of Eckman since the modification is merely the selection of a known material for intended use and is merely an alternate equivalent cover closure means for a tight seal for transport that can contain an additional range of benefits such as enhanced ergonomic performance; a design choice to achieve certain manufacture parameters; and a means for preventing the release of the liquid contents as taught by Eckman.

Finally, examiner maintains that Turner as further modified by Saks is a valid modification. Saks teaches a vase grid cover for holding plant stems that is translucent (Saks et al Col. 2 line 13-14). Applicant provides no criticality in the specification for this

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material selection. Therefore, the modification taught by Saks et al is merely an aesthetic design choice selected to enhance the appearance of the arrangement.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

AMV  
May 5, 2003

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